

**TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 17-01**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS FINANCE ORDINANCE; SETTING FORTH PURPOSE, APPLICABILITY, RESPONSIBILITY OF THE FINANCE DEPARTMENT, PROVIDING DEFINITIONS, PURCHASING PROCEDURES, SPECIFICATIONS, PERFORMANCE BOND AND INSURANCE REQUIREMENTS, CONSTRUCTION CONTRACTS AND SUPPORTING DOCUMENTS, DISQUALIFICATION OF VENDORS AND BIDDERS, APPEALS AND REMEDIES, STANDARDS OF CONDUCT FOR TOWN OFFICIALS AND EMPLOYEES, REPEAL OF PRIOR FINANCE ORDINANCES; PROVIDING FOR PURCHASING POLICIES AND PROCEDURES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

**NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:**

**Section 1. Adoption of Purchasing Goods and Services Policies and Procedures Manual.**

The Town of Fort Myers Beach Purchasing of Goods and Services Policies and Procedures Manual attached hereto as Exhibit A, and hereby incorporated by reference, is hereby adopted as the Town Finance Ordinance in its entirety.

**Section 2. Repeal of Prior Ordinances, Conflict and Severability.**

A. Town Ordinances 07-01 and 08-14 are hereby repealed in their entirety

and have no further force or effect. In addition, all sections or parts of sections of any other Ordinances or Resolutions of the Town in conflict herewith are hereby repealed to the extent of such conflict.

B. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

### Section 3. Effective Date.

This Ordinance takes effect immediately upon adoption by the Town.

The foregoing ordinance was enacted by the Town Council upon a motion by Council member Shamp and seconded by Council member Cereceda and, upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Anita Cereceda, Council Member	Aye
Joanne Shamp, Council Member	Aye
Tracey Gore, Council Member	Aye

DULY PASSED AND ADOPTED ON THIS 6th DAY OF FEBRUARY, 2017


ATTEST:

By:


  
Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

By:

  
Dennis C. Boback, Mayor

Approved as to form by:

  
Dawn E. Perry-Lehnert, Town Attorney

# TOWN OF FORT MYERS BEACH PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES – EXHIBIT A

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## SECTION 1. PURPOSE.

The purpose of this Ordinance is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases. This Ordinance is intended to supplement the provisions pertaining to procurement of goods and services set forth in Florida Statutes.

## SECTION 2. APPLICABILITY.

This Ordinance applies to all purchases of supplies and services and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this Ordinance and any applicable state or federal law or the Town Charter, the most restrictive provisions will prevail.

## SECTION 3. RESPONSIBILITIES OF THE FINANCE DEPARTMENT.

The Finance Department is authorized to promulgate procedures for the requisition of supplies, goods and services; and, all purchases of goods and services must be processed through this Department.

For purchases of \$500.00 or more, the Finance Department will certify that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for approval by the Town Manager or designee, and the proper purchasing procedures have been followed.

## SECTION 4. DEFINITIONS.

*"Brand Name or Equal Specification"* means a specification limited to one or more Items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the Town's requirements, and which provides for the submission of equivalent products.

*"Brand Name Specification"* means a specification limited to one or more items by Manufacturers' names or catalog numbers.

*"Business"* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do Business in the State of Florida and doing business in the State of Florida.

*"Change Order"* means a written change to a contract after the contract has been awarded.

*"Town Official"* means any Town Council Member, the Mayor any other person who is elected to fill a position with the Town of Fort Myers Beach.

*"Confidential Information"* means any information that is available to any employee only because of the employee's status as an employee of the Town and is not a matter of public knowledge or available to the public on request.

*"Construction"* means the process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvement of any kind to any structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.



"Contract" means all types of Town agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

"Equipment" means all property, including but not limited to, Town capitalized equipment.

"Firm" or "Vendor" means any corporation, partnership, individual, sole proprietorship, joint stock Company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Indirect" or "Indirect Interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or Town official.

"Material Interest" means direct or indirect ownership of more than five percent of the total assets or capital stock of any business or firm.

"Invitation to Bid" (ITB) means all documents, whether attached or incorporated by reference, utilized by the Town for soliciting sealed bids.

"Invitation to Negotiate" (ITN) means all documents, whether attached or incorporated by reference, utilized by the Town for soliciting proposals.

"Request for Proposals" (RFP) means all documents, whether attached or incorporated by reference, utilized by the Town for soliciting proposals.

"Request for Qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the Town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

"Responsible Offeror" means a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance of the contract.

"Responsive Bidder" means a person or firm who has submitted a bid that confronts in all material respects to the requirements set forth in the Invitation to Bid.

"Selection Advisory Committee" means a committee of staff members, town members with expert knowledge, and contracted professionals of the Town, not in conflict with the commodity being bid, who evaluate professional service contract submittals to the Town Manager and/or Council for approval.

"Sole Source" means only one available source for supply, equipment, service or construction items.

"Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

## SECTION 5. PURCHASING PROCEDURES.

### A. Competitive Sealed Bidding.

#### 1. Applicability.

Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services, including professional services in excess of \$25,000.00 will be awarded by competitive sealed bid.

#### 2. Invitation to Bid.

For all purchases subject to competitive bidding, the Finance Department, with assistance from the affected departments, will issue an Invitation to Bid that includes specifications, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the Invitation to Bid and this Ordinance, the provisions of this Ordinance will prevail.

#### 3. Addendum.

After an Invitation to Bid is issued and before the bid opening, the affected Department and/or the Finance Department may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the bid. The Finance Department is solely responsible to issue all addenda.

#### 4. Public Notice.

All Invitations to Bid must be published at least once in a newspaper of general circulation in the Town for a minimum of 30 days preceding the last day set for the opening of bids. The public notice must state the place, date, and time of the bid opening; a general description of the subject matter of the bid, and where bid forms and specifications may be obtained.

#### 5. Bid Bond.

The Invitation to Bid may specify that a form of bid security, as a guarantee that all provisions of the specifications will be met, is required. The bid bond must provide that if the bid is: (a) rejected by the Town; or, (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void. Otherwise it remains in full force and effect. As an alternative to a bid bond, the required bid security may be provided in the form of a certified check, a cashier's check, treasurer's check or bank draft of any national or state bank made payable solely to the Town of Fort Myers Beach. No third-party endorsed payments are acceptable for this purpose. If the Town permits a bidder to withdraw its bid, no action will be taken against the bidder or the bid security.

#### 6. Bid Opening.

Bids will be opened publicly at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as the Finance Department Director deems appropriate, together with the name of each bidder will be recorded and made available for public inspection. Exhibit A.

Bid openings must be scheduled a minimum of 30 calendar days after the date that the Invitation to Bid is advertised.

7. Bid Acceptance.

Bids will be unconditionally accepted without alteration or correction, except as may be authorized in this Ordinance. All bids will be deemed to be held open and irrevocable for the time period set forth in the Invitation to Bid.

8. Bid Evaluation.

Bids will be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation to Bid must set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation to Bid.

9. Bid Mistakes.

Mistakes discovered before the bids are opened may be modified by the bidder via written notice from the bidder specifically identifying the modification and the reason the modification is necessary. In lieu of modification, the bidder may also withdraw the bid submittal. The written notice as to modification or withdrawal must be received in the office designated in the Invitation to Bid prior to the time set for bid opening.

10. Bid Withdrawal.

After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the Town, if the following is established to the satisfaction of the Town Manager.

In the Town Manager's sole judgment:

- a) The bidder acted in good faith in submitting the bid;
- b) In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
- c) The error was not the result of gross negligence or willful inattention on the part of the bidder;
- d) The error was discovered and communicated to the Town Finance Department within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
- e) The bidder submits documentation acceptable to the Town and an explanation of how the bidding error was made.

11. Cancellation of Invitation to Bid.

An Invitation to Bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. The following are considered good cause for rejection of all bids:

- a) All bids exceed the estimated or budgeted amount.
- b) The specifications contain an error that causes confusion and misunderstanding among bidders.
- c) The items or services are no longer needed.
- d) Lack of adequate competition.
- e) Notice of cancellation will be sent to all businesses solicited or submitting bids.

12. Bid Award.

- a) All bids will be awarded by Town as soon as practical after the bids are opened. Bids will be awarded to the lowest responsible and responsive bidder whose Bid meets the requirements and criteria set forth in the Invitation to Bid. The Town reserves the right to reject any and all bids and to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation that does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the Town.
- b) In the event the lowest responsive and responsible bid for a construction project exceeds available funds, as certified by the Finance Department Director, and the bid does not exceed available funds by more than ten percent ), the Town Manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment may be obtained only by eliminating independent deductive items specified in the Invitation to Bid.

13. Tie Bids.

In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:

- a) The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
- b) The bidder who has its principal place of business in Lee County, Florida.
- c) The bidder who has its principal place of business in the State of Florida.

14. Selection Advisory Committee.

- a) A Selection Advisory Committee, consisting of a minimum of three members selected by the Town Manager, may be established for the purpose of evaluating bids submitted to the Town. The Selection Advisory Committee may consist of: a Town Department Director or their designees, members of the Town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b) All members of the Selection Advisory Committee are prohibited from speaking, answering questions, or having contact with any potential bidder. During this process the Selection Advisory Committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when Council approves the contract.

- c) All meetings of the Selection Advisory Committee will be open to the public and notices containing the date, time, place, and purpose of all Selection Advisory Committee meetings will be conspicuously posted in Town Hall. All meetings of the Selection Advisory Committee will be recorded and recordings will be available for public inspection.
- d) The Selection Advisory Committee will review the submittal materials provided by the Finance Department prior to the Selection Committee meeting. The Committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project, proposed method of handling of the project and any other criteria included for evaluation in the Invitation to Bid.
- e) After evaluation, the Committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly qualified to perform the required services, unless noted above. The Town Manager, after review, will forward the recommendation to the Town Council for consideration during a regularly scheduled Council meeting.
- f) If no more than two firms submit proposals, the Town Manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.

In determining whether a firm is qualified, the Committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; and, recent, current, and projected workloads of the firm. The Selection Advisory Committee may not request, accept, or consider proposals for compensation to be paid under the contract.

#### 15. Recommendation.

- a) The Town Council will carefully consider the recommendations of the Town Manager and Selection Advisory Committee, review the qualifications of the firms, and vote to accept or reject the ranking of the firms as proposed by the Town Manager.
- b) After the ranking of the firms has been determined by the Town Council, the Council will direct the Town Manager or designee to initiate negotiations with the number one ranked firm. The Town Council may reject the ranking order recommended by the Town Manager and propose an alternative ranking or require re-solicitation.

#### 16. Negotiation

- a) The Town Manager will negotiate a contract with the most qualified firm for compensation the Town Manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the Town Manager may conduct a detailed analysis of the cost of the professional services required in addition to considering the scope and complexity of the project.
- b) For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The Contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to exclude increases

in the contract price demonstrably related to inaccurate or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.

- c) If the Town Manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated; and, the Town Manager will undertake negotiations with the second ranked firm. If the Town Manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d) If the Town Manager is unable to negotiate a satisfactory contract with any of the selected firms, the Town Manager may select additional firms in the order of their competence and qualification and submit them to Council for determination and ranking and continue selection and negotiations as specified in this ordinance until an agreement is reached or reissue the Invitation to Bid.

17. Town Council Approval.

The Town Manager will seek Town Attorney review of the negotiated contract prior to forwarding the contract to the Town Council for approval.

B. Small Purchases.

1. Applicability.

Any purchase of \$25,000 or less may be made in accordance with the small purchase procedures authorized in this section. Contract requirements may not be artificially divided so as to constitute a small purchase under this section. [In determining whether a purchase constitutes a small purchase, the total estimated project cost must be considered, including both construction and professional services.] Any Purchase in excess of \$25,000 must be approved by Town Council. EXHIBIT F. All small purchases must be accompanied by a quote sheet. EXHIBIT B.

2. Purchases over \$4,000 and Not Greater Than \$25,000.

For smaller purchases of \$4,000 and over, no less than three written quotations must be obtained, if available (e.g. not a sole source situation). The award will be made by the Department Director and Town Manager, with review by the Finance Department Director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, must be recorded and maintained in the Town's records. For items purchased on an ongoing basis, contracts may not be for a term in excess of two years without obtaining new quotations to determine if the price is still the lowest.

3. Purchases Over \$500 and Not Greater than \$4,000.

For purchases greater than \$500 but less than \$4,000, a minimum of three verbal, telephone, facsimile or electronic quotations may be obtained, if available. The award may be made by the Department Director, with review by the Finance Department Director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, will be recorded and maintained in the Town's records.



4. Purchases for \$500 and Under.

For purchases of \$500 and under, one verbal quotation is required, provided the Quotation is fair and reasonable as determined by the Department Director and documented on the quote sheet.

5. Tie Bids.

In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:

- a) The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
- b) The bidder who has its principal place of business in Lee County, Florida
- c) The bidder who has its principal place of business in the State of Florida.

C. Sole Source Purchases.

1. Basis for Sole Source Purchase.

- a) A contract may be awarded without competition when the Finance Department Director, in conjunction with the Department Director determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department must submit to the Finance Department written justification as to why there is only one source. EXHIBIT C.
- b) The Town Manager or designee will conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the Town Manager. A record of sole source contracts must be maintained by the Town Finance Department. Sole source contracts may not be automatically renewed.
- c) At the beginning of each fiscal year, the Finance Department Director, in conjunction with the Department Director, will determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations must be obtained before the item is purchased under a new contract.

2. Town Council Approval.

The Town Manager will submit all sole source purchases of \$20,000 or more to the Town Attorney for review, and submit the contract to the Town Council for approval.

D. Emergency Purchases.

1. Basis for Emergency Purchase.

Notwithstanding any other provisions of this Ordinance, the Town Manager or designee may make, or authorize others to make, emergency purchases of supplies, services, or construction items

when there exists a threat to public health, welfare, or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The Director of the affected department will notify the Town Manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items. The Director will send a purchase order request to the Finance Department, together with a written explanation of the basis for the emergency purchase. EXHIBIT D. The Town Manager or designee must approve all emergency requisitions.

2. Town Council Approval.

The Town Manager will submit any emergency purchase in excess of \$25,000 to the Town Attorney for review and submit the contract to the Town Council for ratification, as soon as practicable after the purchase.

E. Purchases from Other Governmental Entities.

1. Basis for Purchase

Purchases of goods from the Federal Government, any State or political subdivision thereof, or any municipality are exempt from the requirements of this Ordinance. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy and in cases of piggybacking contracts certification that the other governmental entity's contract allows for this conduct. EXHIBIT E.

2. Town Council Approval.

The Town Manager will submit any individual purchases in an amount in excess of \$25,000 to the Town Attorney for review and submit the contract to the Town Council for approval.

F. Purchases of Goods from Contracts Awarded by Other Governmental Entities by Competitive Bid (aka "Piggybacking").

1. Basis for Purchase.

The purchase of goods under a contract awarded by another governmental entity is authorized provided the Finance Department Director makes a written determination that time and expense factors make it financially advantageous for the Town to do so. In making this determination, the Finance Department Director will consider the number of bids so solicited by the other governmental entity. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy and, in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct. EXHIBIT E.

2. Town Council Approval.

The Town Manager will submit any contracts awarded by the Town based upon another governmental entity's procurement process in an amount in excess of \$25,000 to the Town Attorney for review and submit the contract to the Town Council for approval.



G. Cooperative Purchasing.

1. Basis for Purchase.

The Finance Department may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one or more other governmental units.

2. Town Council Approval.

Cooperative purchasing agreements must be authorized pursuant to an Interlocal Agreement approved by Town Council and executed by all participating governmental units. The Town Manager will forward the proposed interlocal agreement to the Town Attorney for review and submit the Interlocal Agreement to the Town Council for approval.

H. Competitive Negotiation for Professional Services.

1. Applicability.

Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying must be competitively negotiated in accordance with the requirements of Section 287.055, Florida Statutes (the "Consultant's Competitive Negotiation Act" or "CCNA")

2. Request for Qualification.

The Department Director will prepare, with the assistance of the Finance Department Director, and review by the Town Manager or designee, a Request for Qualification for the particular project. The request will include:

- a) A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
- b) A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
- c) A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the Town to engage in negotiations.

3. Addenda.

- a) After a Request for Qualifications(RFQ) is issued and before the submission deadline, the Finance Department, with assistance from the affected department, may issue one or more written addendum for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.

- b) Any firm or individual desiring to provide professional services to the Town must first be certified by the Town as qualified pursuant to law and the regulations of the Town. The Town will make a finding that the firm or individual to be employed is fully qualified to render the required service. The factors to be considered include, but are not limited to, the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

4. Public Notice and Qualification Procedures.

The Town Clerk must publish, in a newspaper of general circulation, as such is defined in the Florida Statutes, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the Town to be in excess of \$250,000, or for planning or study activities when the fee for professional services is in excess of \$25,000, other than as permitted by the CCNA. The notice must include a general description of the project, will indicate how interested parties may apply for consideration, the closing date for receipt of proposals, and other information as the Town deems pertinent. Publications of statewide and national distribution may be utilized for notices when the magnitude of the project so merits in the Town's discretion. The submission deadline must be a minimum of 30 days after the date the RFQ is first published.

5. Selection Advisory Committee.

- a) A Selection Advisory Committee, consisting of a minimum of three members selected by the Town Manager, will be established for the purpose of evaluating firms submitting a response to the RFQ. The Selection Advisory Committee may consist of: Town Department Directors or designees, and members of the Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b) All members of the Selection Advisory Committee are prohibited from speaking, answering questions or having contact with any potential service provider. During this process the Selection Advisory Committee will operate in a "cone of silence" decorum from the solicitation posting and ending when Council approves the contract.
- c) All meetings of the Selection Advisory Committee will be open to the public and notices containing the date, time, place and purpose of all Selection Advisory Committee meetings will be conspicuously posted in Town Hall. All meetings of the Selection Advisory Committee will be recorded and recordings will be available for public inspection.
- d) The Selection Advisory Committee will review the submittal materials provided by the Finance Department prior to the Selection Committee meeting. The Committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project, and any other criteria set forth in the solicitation package.
- e) After evaluation, the Committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly qualified to perform the required services, unless noted above. The Town Manager, after review, will forward the recommendation to the Town Council for consideration during a regularly scheduled Council meeting.

- g) If no more than two firms submit proposals, the Town Manager will determine whether to proceed with only two proposals based on availability of alternatives and qualifications.
- f) In determining whether a firm is qualified, the Committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; and, recent, current, and projected workloads of the firm. The Selection Advisory Committee may not request, accept, or consider proposals for compensation to be paid under the contract, except as set forth in (b) above.

6. Recommendation.

- a) The Town Council will carefully consider the recommendation of the Town Manager and review the qualifications of the firms prior to a vote to accept, reject, or modify the ranking of the firms as submitted by the Town Manager.
- b) After the ranking of the firms has been determined by the Town Council, the Council will direct the Town Manager or designee to initiate negotiations with the number one ranked firm. The Town Council may reject the ranking order recommended by the Town Manager and propose an alternative ranking or require resolicitation.

7. Negotiation.

- a) The Town Manager will negotiate a contract with the most qualified firm for professional services for compensation the Town Manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the Town Manager may conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- b) For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000, the firm receiving the contract must execute a Truth -in- Negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The Contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted due to inaccurate, or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c) If the Town Manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the Town Manager will undertake negotiations with the second ranked firm. If the Town Manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d) If the Town Manager is unable to negotiate a satisfactory contract with any of the selected firms, the Town Manager may select additional firms in the order of their competence and qualification and submit them to Council for determination and ranking; and, thereafter continue selection and negotiations as specified in this Ordinance until an agreement is reached or reissue the Request for Qualifications.

8. Town Council Approval.

The Town Manager will submit the negotiated contract to the Town Attorney for review and the contract to the Town Council for approval.

9. Prohibition Against Contingent Fees.

Each contract entered into by the Town for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer as applicable) warrants that he/she has not employed, or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the Town has the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

10. Reuse of Existing Plans.

There is no public notice requirement or utilization of the selection process for projects in which the Town is able to reuse existing plans from a prior project. However, with plans that the Town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with Section 287.055(11) Florida Statutes.

11. Exception to CCNA Process - Emergencies.

Under emergencies as defined by Florida Statutes s. 287.055, as amended, the procedure set forth in the statute must be followed and supersedes anything to the contrary set forth in this section H.

12. Exception to CCNA Process - Continuing Contracts.

In the event that the continuing contract provisions of Florida Statutes s. 287.055 apply to acquisition of professional services, the procedure set forth in the statute will be followed and supersedes anything to contrary set forth in this section H.

I. Request for Proposal.

1. Applicability.

Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section.

2. Request for Proposal.

The Department Director will prepare, with the assistance of the Finance Department Director, and review by the Town Manager or designee, a Request for Qualification for the particular project. The request must include:

- a) A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
- b) A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
- c) A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing, envelope may not be opened unless the proposer is selected by the Town to engage in negotiations.

3. Addenda.

After a Request for Proposals is issued and before the submission deadline, the Finance Department may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the RFP/RFQ.

4. Statement of Qualifications.

Persons and firms interested in providing goods and/or services to the Town in response to an RFP issued pursuant to this Section may submit statements of qualification and expressions of interest in providing such goods and/or services.

5. Public Notice.

The Town will provide reasonable notice of the need for such goods and/or services through a Request for Proposals (RFP). The RFP must describe the goods and services required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.

6. Selection Advisory Committee.

- a) A Selection Advisory Committee, consisting of a minimum of three members, will be established for the purpose of evaluating firms submitting a response to the RFP. The Selection Advisory Committee may consist of: Department Directors or designees, and members of the Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b) All members of the Selection Advisory Committee are prohibited from speaking, answering questions or having contact with any potential proposer. During this process the Selection Advisory Committee will operate in a "cone of silence" decorum from the proposal posting and ending when Council approves the contract.
- c) All meetings of the Selection Advisory Committee will be open to the public and notices containing the date, time, place, and purpose of all Selection Advisory Committee meetings will be conspicuously posted in Town Hall. All minutes of the meetings of the Selection Advisory Committee will be recorded and recordings will be available for public inspection.

- d) The Selection Advisory Committee will review the submittal materials provided by the Finance Department prior to the Selection Committee meeting. The Committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project, proposed method of handling of the project, and any other criteria set forth in the solicitation package.
- e) After evaluation, the Committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly qualified to perform the required services, unless noted above. The Town Manager, after review, will forward the recommendation to the Town Council for consideration during a regularly scheduled Council meeting.
- f) If no more than two firms submit proposals, the Town Manager will determine whether to proceed with only two proposals based on availability of alternatives and qualifications.
- g) In determining whether a firm is qualified, the Committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm.

7. Recommendation.

- a) The Town Council will carefully consider the recommendation of the Town Manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the Town Manager.
- b) After the ranking of the firms has been determined by the Town Council, the Council will direct the Town Manager or designee to initiate negotiations with the number one ranked firm. The Town Council may reject the ranking order recommended by the Town Manager and propose an alternative ranking or require re-solicitation

8. Negotiation.

- a) The Town Manager will negotiate a contract with the most qualified firm for compensation the Town Manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the Town Manager may conduct a detailed analysis of the cost of the services required in addition to considering their scope and complexity.
- b) For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000, the firm receiving the contract must execute a Truth -in- Negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The Contract must include a provision indicating that the original contract price and any additions thereto may be adjusted to exclude increases due to inaccurate, incomplete billing information, or based upon wage rates and unit costs not agreed to as part of the contract.
- c) If the Town Manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the Town Manager will undertake negotiations with the second ranked firm. If the Town Manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.



- d) If the Town Manager is unable to negotiate a satisfactory contract with any of the selected firms, the Town Manager may select additional firms in the order of their competence and qualification and submit them to Council for determination and ranking; and, thereafter, continue selection and negotiations as specified in this Ordinance until an agreement is reached or reissue the Request for Proposals.

9. Discussions.

The Town Manager or the Selection Advisory Committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. These discussions must be conducted at a duly notice meeting and be open to the public.

10. Award.

- a) Proposed Awards above \$25,000 must be formally approved by the Town Council. The award should be made to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
- b) Nothing in this Ordinance may be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the Town Manager or Town Attorney in representing the Town, but such hiring may be subject to Council approval.

11. Town Council Approval.

The Town Manager will submit a negotiated contract for \$25,000 or more to the Town Attorney for review and then submit the contract to the Town Council for approval.

12. Cancellation of Request for Proposals.

A Request for Proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:

- a) All bids exceed the estimated or budgeted amount.
- b) The specifications contain an error which causes confusion and misunderstanding among bidders.
- c) The items or services are no longer needed.
- d) Lack of adequate competition.
- e) Notice of cancellation will be sent to all businesses solicited or submitting bids.

## SECTION 6. VENDOR LIST

The Finance Department does not maintain a "Vendor List" of Vendors who desire to receive Invitations for Bids and/or Requests for Proposals by mail.

## SECTION 7. SPECIFICATIONS FOR ALL SOLICITATIONS.

### A. General.

All specifications must be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs, and may not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the Town by architects, engineers, designers, and draftsmen.

### B. Brand Name or Equal Specification.

#### 1. Use.

Brand Name or Equal specifications may be used when the Department Director and Finance Department Director determines in writing that:

- a) No other design or performance specification or qualified products list is available;
- b) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- c) The nature of the product or nature of the Town's requirements makes use of a brand name or equal specification suitable; or
- d) Use of a brand name or equal specification is in the Town's best interest.

#### 2. Designation of Several Brand Names.

Brand name or equal specifications will seek to designate three, or as many different brands as practicable, as "or equal" references and further state that substantially equivalent products to those designated will be considered for award.

#### 3. Required Characteristics.

Unless the Finance Department Director and the affected Department Director determine in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications must include a description of the particular design, function, or performance characteristics required.



4. Nonrestrictive Use of Brand Name or Equal Specifications.

When a brand name or equal specification is used in a solicitation, the solicitation should contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

C. Brand Name Specification.

Since use of a brand name specification is restrictive of product competition, it may be used only when the Finance Department Director makes a written determination that only the identified brand name items will satisfy the Town's needs.

D. Competition.

The Finance Department Director, in conjunction with the Department Director, will seek to identify sources from which the designated brand name items can be obtained and solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase will be made in accordance with Purchasing Procedures Section 5-C (Sole Source Purchases).

## SECTION 8. PERFORMANCE BOND AND INSURANCE REQUIREMENTS.

The Finance Department Director will require a public construction bond for all contracts listed in Purchasing Procedures Section 5-C (Sole Source-Purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the Town.

## SECTION 9. CONSTRUCTION CONTRACTS AND SUPPORTING DOCUMENTS.

A. Construction Contracts.

All construction contracts will be reviewed by the Town Attorney and be executed by the Mayor and Town Clerk and by either the President or Vice-President of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor must be affixed to the contract.

B. Insurance.

All construction contracts must be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.

C. Public Construction Bond.

Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work must, before commencing work, execute, deliver to the town, and record in the Public Records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.

1. Form.

The bond must be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, \_\_\_\_\_, as Principal and \_\_\_\_\_, a corporation, as Surety, are bound to the Town of fort Myers Beach, herein called Owner, in the sum of \$ \_\_\_\_\_, as payment for which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated \_\_\_\_\_, between Principal and Owner for construction of \_\_\_\_\_, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and payment for all losses, damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and

Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force,

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

2. Waiver of Bond.

Only the Town Council may waive the public construction bond requirement for a project. However, a bond will be required for all projects of \$200,000 or more.

3. Alternative Form of Security.

In lieu of a public construction bond, a contractor may file with the Town an alternative form of security in the form of cash, money order, certified check, cashier's check, an irrevocable letter of credit, or security of a type listed in Part II of Chapter 652, Florida Statutes.

Any alternative form of security must be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security will be made by the Town.

D. Change Orders.

- a) No work outside the scope of the original contract may be performed prior to approval of a change order by the Town Council, provided, however, that Town Council may delegate this authority, up to a specified amount, for contracts where Council approval of all change orders would hinder or delay work progress.

- b) This does not include contingency changes with a contract that fall within the contingency amount of that contract. These are approved by the Department Director and Town Manager.
- c) All Change Orders must be in writing and have Town Manager approval.

## SECTION 10. DISQUALIFICATION OF VENDORS AND BIDDERS.

### A. Procedure for Disqualification.

After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the Town Manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification may be for a period of not more than four years.

### B. Grounds for Disqualification.

Grounds for disqualification include, but are not limited to:

- a) Conviction for commission of a criminal offense as an incident to obtaining a contract;
- b) Attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- c) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the Town;
- d) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- e) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;
- f) Financial irresponsibility;
- g) Unethical conduct; Disciplinary action against the person or firm's professional or contractor's license; or
- h) Findings under Bid Protest that the firm acted fraudulently or in bad faith.

### C. Notice of Decision.

A copy of a decision to disqualify must be mailed to the affected person or firm by certified mail, return receipt requested.

D. Appeal.

Any person or firm who is disqualified may appeal the decision to the Town Council, provided a Notice of Appeal is filed within 30 days of the date the decision to disqualify is rendered.

SECTION 11. APPEALS AND REMEDIES.

A. Bid Protests.

1. Right to Protest.

Any person or firm who is affected adversely by the Town's decision may protest to the Town Council.

2. Time Limits and Form of Protest.

- a) A protest with respect to an Invitation to Bid or Request for Proposal must be submitted in writing to the Town Clerk prior to the opening of bids or the closing date of proposals.
- b) Written Notice of Intent to protest a bid be filed with the Town Clerk within 72 hours (excluding Saturday, Sundays, and Legal Holidays) after the posting of the bid tabulation or after receipt of the Notice of Award or Notice of Intent to award the contract, whichever is later.
- c) A formal written protest must be filed within 10 days after the filing of the initial written Notice of Intent to Protest. The formal written protest must state with particularity the fact and law upon which the protest is based.
- d) Failure to file a Notice of Intent to Protest or failure to file a formal written protest within the time limits proscribed herein will constitute a waiver of the right to protest.
- e) The protestor must post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent of the total bid or \$20,000, whichever is greater, but not to exceed the value of the bid.
- f) The protest bond will be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.

3. Hearing.

- a) If the subject of a protest is not resolved by mutual agreement within 14 days after receipt of a formal written protest, the matter may, at the option of the Town Council, be referred to a hearing officer who will conduct a hearing within 15 days of receipt of the referred formal written protest.
- b) The hearing officer will render a written recommended order within 30 days after the hearing. The recommended order will be scheduled on the next Council agenda for final action.
- c) If Council so elects, the protest may be heard directly by the Town Council.

**B. Stay of Action.**

Upon receipt of a formal written protest that has been timely filed, the Town will stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by Town Council action, unless the Town Manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

**C. Appeal of Decision.**

If a protest is denied, the protestor will have 30 days to file for relief in Circuit Court in Lee County, Florida.

**SECTION 12. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.**

**A. Closing Date for Receipt of Proposals.**

If prior to the bid opening or closing date for receipt of proposals, the Finance Department Director and the affected Department Director, after consultation with the Town Manager and Town Attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation may be cancelled or revised to comply with applicable law.

**B. Prior to Award.**

If after bid opening or the closing date for receipt of proposals, the Finance Department Director and the affected Department Director, after consultation with the Town Manager and Town Attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be cancelled.

**C. After Award.**

If, subsequent to an award, the Finance Department Director and the affected Department Director determine in consultation with the Town Manager and Town Attorney, that a solicitation or award of a contract was in violation of applicable law, then:

- a) If the person or firm awarded the contract has not acted fraudulently or in bad faith the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Town; or
- b) The contract may be terminated and the person awarded the contract will be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
- c) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the Town.

## SECTION 13. STANDARD OF CONDUCT FOR TOWN OFFICIALS AND EMPLOYEES.

### A. Failure to Follow Proper Purchasing Procedures.

It is a violation of this Ordinance for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the Finance Department.

### B. Solicitation or Acceptance of Gifts.

No Town official or employee may solicit or accept anything of value from any vendor or bidder, including gift, loan, reward promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.

### C. Doing Business with the Town.

- a) No employee or public official acting in his/her official capacity may either directly or indirectly purchase, rent, or lease any realty, goods, or services for the Town from any business entity for which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest.
- b) No Town official or employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the Town.

### D. Unauthorized Compensation.

No Town official or employee or his/her spouse or minor child may, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.

### E. Conflicting Employment or Contractual Relationship.

No Town official or employee may have or hold any employment or contractual relationship with any business entity that is doing business with the Town, provided however, this section may not be construed to prevent any officer or employee from accepting any other employment or following any pursuit that does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the Town.

### F. Contingent Fees.

No Town official or employee may be retained, or retain a person, to solicit or secure a Town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

G. Confidential Information.

No Town official or employee may disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.

H. Penalties.

Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:

1. In the case of a Town Official:
  - a) Forfeiture of office as provided in the Town Charter.
  - b) Restitution of any pecuniary benefit received because of the violation committed.
2. In the case of a Town employee:
  - a) Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment is mandatory.
  - b) Suspension from employment for not more than 90 days without pay.
  - c) Demotion.
  - d) Reduction in salary level.
  - e) Oral or written reprimands or warnings.
  - f) Any discipline imposed will be subject to the Town's personnel rules.

I. Contracts Voidable.

If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the Town, be declared null and void or voidable.

## SECTION 14. CONE OF SILENCE

A. Purpose and Intent.

The requirements of Section 14, "Cone of Silence", as amended, are applicable to the Town. It is the intent of this Ordinance to prevent potential bidders, offerors or service providers from communicating with Town department heads, their staff, Town Council or Selection Advisory Committee members during the period of time in which the cone of silence is imposed.

1. Meaning.

*"Cone of silence"* is defined to mean a PROHIBITION on:

- a) Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the Town's professional staff including, but not limited to, the Town Manager and his or her staff;



- b) Any communication regarding a particular RFP, RFQ or IFB between the Mayor, Town Council or their respective staffs and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff;
- c) Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and any member of the Selection Advisory Committee;
- d) Any communication regarding a particular RFP, RFQ or IFB between the Mayor, Town Council or their respective staffs and any member of the Selection Advisory Committee;
- e) Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the Mayor, Town Council and their respective staffs; and
- f) The Town Manager and the chairperson of the Selection Advisory Committee may communicate about a particular Selection Advisory Committee recommendation, but only after the Committee has submitted an award recommendation to the Town Manager and, provided that should any change occur in the Committee recommendation, the content of the communication and of the corresponding changes must be described in writing and filed by the Town Manager.

## 2. Allowed Communications.

Notwithstanding the foregoing, the cone of silence does not apply to:

- a) Communications with the Town Attorney and his or her staff;
- b) Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes a written recommendation;
- c) Communications regarding a particular RFP, RFQ or IFB between any person and the Finance Department Director or designee, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and
- d) Communications regarding a particular proposal, quotation or bid between the Finance Department Director or designee and a member of the Selection Advisory Committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

## B. Procedure.

- a) A cone of silence will be imposed upon each RFP, RFQ and IFB after the advertisement of the RFP, RFQ or IFB. At the time of imposition of the cone of silence, the Finance Department Director or designee will provide for public notice of the cone of silence. The Finance Department Director will issue a written notice thereof to the affected departments, file a copy of such notice with the Town Clerk, with an email copy thereof to each Town Council member, and include in any public solicitation for supplies or services a statement disclosing the requirements of this Ordinance. Notwithstanding any other provision of this section, the imposition of a cone of silence on a



particular RFP, RFQ or IFB will not preclude procurement staff from obtaining industry comment or performing market research provided all communications related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.

- b) The cone of silence terminates at the time Town Council votes to award the contract.
- c) If the Town Manager rejects all bids or proposals submitted in response to an RFP or IFB and concurrently requests the re-issuance of an RFP or IFB, the rejected bids or proposals will remain under the cone of silence until such time the Town Manager issues a written recommendation of award or until the Town Manager withdraws the re-issued RFP or IFB.

## SECTION 15. EXHIBITS

EXHIBIT A Bid Tally Sheet

EXHIBIT B Quote Sheet

EXHIBIT C Sole Source Purchase

EXHIBIT D Emergency Purchase

EXHIBIT E Cooperative Purchase Justification

EXHIBIT F Procurement Request for Items Over \$25,000

I have read, understand, and acknowledge the Town's purchasing policy and my responsibilities under this policy as a Town Employee. I acknowledge that if I have questions I will contact the Finance Director or Town Manager.

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Name

---

Date

**Bid #**

[illegible]

**STAFF PRESENT**

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QUOTE SHEET ITEM/SERVICE \_\_\_\_\_ DATE \_\_\_\_\_

SCOPE ATTACHED: \_\_\_\_\_

QUOTE #1 Company \_\_\_\_\_

Contact Name and Phone # \_\_\_\_\_

PRICE \_\_\_\_\_

QUOTE #2 Company \_\_\_\_\_

Contact Name and Phone # \_\_\_\_\_

PRICE \_\_\_\_\_

QUOTE #3 Company \_\_\_\_\_

Contact Name and Phone # \_\_\_\_\_

PRICE \_\_\_\_\_

AWARD TO: \_\_\_\_\_

Address for Billing \_\_\_\_\_

Budget Line Item: \_\_\_\_\_ Verified Budget available: \_\_\_\_\_

If Sole Source Attach Sole Source Documentation letter

DEPARTMENT AUTHORIZATION \_\_\_\_\_ Date \_\_\_\_\_

TOWN MANAGER SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

Attach Item Descriptions/Comparison Sheets PO # \_\_\_\_\_ Contract # \_\_\_\_\_

Purchases Under \$500 - Verbal Quote note date, time and whom you spoke to on the bill – Shop for best price.

**MUST HAVE A PURCHASE ORDER-**

Purchases with the credit card over \$500.00 also must have a purchase order to encumber the funds

Purchases \$501 to \$3,999.00 3 quotes, Document the vendor information and amount on the quote sheet

Purchases \$4,000.00 to \$24,999 3 written quotes, Document on the Quote Sheet & provide the copies of the quotes the vendor sent you

\$25,000.00 within a fiscal year - Competitive Sealed Bids

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION:  
SOLE SOURCE ACQUISITION**

**1. Contracting Organization:** The Town of Fort Myers Beach is responsible for this action. The Department of the Town Requesting is \_\_\_\_\_

**2. Description of Action:** This procurement request is to justify the request for goods or services for the justification of a sole source vendor.

**3. Description of Goods or Services:** The purpose of this request is \_\_\_\_\_

The vendor, \_\_\_\_\_ will be responsible for \_\_\_\_\_

**4. Authority:** The authority permitting the sole sourcing of services is Town of Fort Myers Beach Ordinance 2007-01, Section 5, subsection C page 6 " Department Director determines in writing, after conducting a good faith review of available sources that there is only one source". "The requisitioning department shall submit to the finance department written justification as to why there is only one source."

**5. Applicability Of Authority:** Company X \_\_\_\_\_ is the only qualified vendor in the United States that can meet the \_\_\_\_\_ needs of \_\_\_\_\_ and the justification is as follows:  
\_\_\_\_\_

**6. Efforts to Obtain Competition:** Review of \_\_\_\_\_ companies or products was undertaken and attached to this document.

**7. Fair and Reasonable:** Comparison of cost for similar products are attached but due to the nature of the good or service we require Company X \_\_\_\_\_ be awarded due to these reasons provided:  
\_\_\_\_\_

**8. Technical Requirements / Personnel Certification:** We hereby certify that the technical requirements and certifications are accurate.

**9. Department Director Certification:** I hereby certify to the best of my knowledge this justification is accurate and complete.

_____	_____	_____
Name	Signature	Date

Finance Review: \_\_\_\_\_

If over \$20,000 Must go to Town Council for approval

Agenda Date \_\_\_\_\_ Attach Copy for Audit \_\_\_\_\_

**REQUEST/JUSTIFICATION FOR EMERGENCY PURCHASE**  
**(ATTACH ADDITIONAL PAGES IF NECESSARY)**

REQUESTER NAME: \_\_\_\_\_ DATE: \_\_\_\_\_  
DEPT/INSTITUTION: \_\_\_\_\_ PHONE: \_\_\_\_\_  
AGENCY/OFFICE: \_\_\_\_\_ REQUISITION #: \_\_\_\_\_

**NATURE, CAUSE OF THE EMERGENCY.** Explain what the emergency is and/or what caused the emergency situation to exist.

**FINANCIAL/OPERATIONAL DAMAGE TO THE TOWN.** Explain the financial or operational damage that will occur if this purchase is not made immediately.

**REASON NEED WAS NOT ANTICIPATED.** State the reason(s) why the need for the purchase was not, or could not be anticipated, so the items could have been procured through normal procedures.

\_\_\_\_\_  
Signature of Head of Dept., \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Administrative Services/Finance Director \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Town Manager \_\_\_\_\_ Date \_\_\_\_\_

Any emergency purchase in excess of \$25,000 must be approved by the Town Council as soon as practicable after the purchase.

Agenda Date \_\_\_\_\_ Attach Copy for Audit \_\_\_\_\_

**Purchases through Interlocal Agreements**

Town Contract Name \_\_\_\_\_ Town Contract #: \_\_\_\_\_

Interlocal Agreement with (government agency or Purchasing Co-Op name): \_\_\_\_\_

Item Description: \_\_\_\_\_

- Do you have an Interlocal agreement signed with the Contract (Host) Agency? If yes, attach to request:
- If no, get a mutually signed Agreement in place before you continue.
- State Contract #: \_\_\_\_\_ Effective Dates \_\_\_\_\_
- If a State contract, attach a copy of the contract and State contract information for reviewing requirements.
- Is this a technology contract? If so is this new technology or an upgrade \_\_\_\_\_ Please indicate how request will interact with existing technology. Will new hardware be required? \_\_\_\_\_
- Is this a services contract? If so what type \_\_\_\_\_
- Is this professional services applies to a planning or study activity where compensation exceeds \$35,000 and in projects where the basic cost of construction, as estimated by the agency, will exceed \$325,000. CCNA applies and must be verified.
- Are you using this as only one of multiple quotes, for a small purchase? If yes, you can skip the remainder of the test. Your purchase will not mandate the sealed bid rules, but attach information to the small purchase quote sheet.

**Checklist for Required Compliance**

Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply	<input type="checkbox"/> Yes <input type="checkbox"/> No	Federal and State contract rules usually don't require a newspaper ad, but may require public hearing or review period. For others, attach the ad or place into the file
Did they list on a website? If so, state when and the address. Attach proof if possible.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Always required. Indicate date, address and/or attach or place into the file.
Did the bid & award comply with the Host agency's codes and statutes?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If No, you cannot use the bid.
Did bid contain any preference that is illegal in our statutes or policies?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, you cannot use the bid.

Department Signature \_\_\_\_\_ Date \_\_\_\_\_

Finance/ Administrative Services Review and Comments

Town Manager Signature \_\_\_\_\_ Date \_\_\_\_\_

Attachments and final copy to Contracts Manager

## Town of Fort Myers Beach, Florida Contract and Procurement Request

Project Characteristics: (attach detailed description and scope of project with each request)

Department requesting procurement: \_\_\_\_\_

Project Title: \_\_\_\_\_

\_\_\_\_\_ Consultant \_\_\_\_\_ Services \_\_\_\_\_ Equipment \_\_\_\_\_ Construction \_\_\_\_\_ Other \_\_\_\_\_

Scope of Work (this is what will appear in the bid documents and/or contract agreement):  
(attach additional sheet if necessary)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Expected contract execution date: \_\_\_\_\_ Date to Purchasing: \_\_\_\_\_

Pre-qualification meeting required? ☐ YES ☐ NO

Town Council approval required? ☐ YES ☐ NO

Expected cost: \$ \_\_\_\_\_

### Funding:

\_\_\_\_\_ Budgeted

Amount: \_\_\_\_\_

Line Item: \_\_\_\_\_

\_\_\_\_\_ Not-Budgeted:

Anticipated revenue source(s): \_\_\_\_\_

\_\_\_\_\_ Emergency purchase \_\_\_\_\_ YES \_\_\_\_\_ NO (if yes, attach memo explaining details)

### Approvals:

Department Director: \_\_\_\_\_

Finance: \_\_\_\_\_

Town Manager: \_\_\_\_\_

<i>For Contracts Manager use Only:</i>	<i>Date</i>
Project Description received	
Type of Solicitation	
Budget verification (page#)	
Bidding documents approved by Department	
Advertising	
Bids/Proposals Accepted	
Selection Committee Members	
Selection Committee Meeting	
Selection Committee Orals (if applicable)	
Town Council meeting	
<i>After selection and award</i>	
Contract run dates	
Completed executed contract	
Insurance certificates expiration dates	